

BOMBAY HIGH COURT

Thakore Saheb Khanji Kashari Khanji

Vs.

Gulam Rasul Chandbhai

First Appeals Nos.130 and 131 of 1955 and C.A. No.210 and 211 of 1955. Baroda in special
Darkhast No.51 of 1954

(Bavdekar, J.)

16.03.1955

JUDGMENT

Bavdekar, J.

1. This is an appeal arising from execution proceedings. The respondent has obtained a decree for money and is seeking to execute it by appointment of a receiver of what he called the land revenue of certain lands in the former principality of Vajiria. The appellant, who was the former Ruler of the State, contended in the first instance that the decree which had been obtained in this case by the respondent was without jurisdiction.

He said that in the second instance the amount of which the respondent prayed that a receiver should be appointed was a pension and was exempt from attachment under the provisions of Section 60, Civil Procedure Code and Section 11, Pensions Act, and in case it could not be attached, no receiver could also be appointed, in respect of it. The learned trial Judge has held that the decree which had been obtained by the respondent was not void for want of jurisdiction. He has indeed accepted that the amount, of which the respondent sought for the appointment of a receiver, was exempt from attachment under the provisions of Section 60 as well as Section 11, Pensions Act; but he said that even so there was no difficulty with regard to the appointment of a receiver. The appellant has come in appeal, and the first point which is made before me is that the decree in this case was without jurisdiction.

2. The respondent attempts to meet this contention by pointing out that the appellant did not raise any contention about jurisdiction in the suit, and he says that now that the Court has passed a decree, this question cannot be gone into in execution. It appears, however, that their Lordships of the Privy Council have decided now once for all that Section 86, Civil Procedure Code is based upon public policy, and it was not open, therefore, to any Ruling Chief to waive the provisions of that section. His failure to object to jurisdiction consequently would not render the

decree as one which had been passed by a Court which had jurisdiction to try the suit.

3. The appellant points next to the ruling of this Court in - '*Ladkuvarbai v. Ghoel Shri Sarsangji Pratabsangji*¹', in which it was held that if a decree was passed without

¹⁷ Bom HCR 150

jurisdiction the Court may not agree to lend its assistance where the assistance was necessary, e.g., by way of an order to issue notice to show cause under Order 21, Rule 22, if it discovers subsequently that the decree which it had passed was one without jurisdiction. In my opinion, it is not necessary to go into this question in the present appeal, for the reason that I do not think that the decree was void for want of jurisdiction.

4. Now, the privilege which had been claimed in this case on behalf of the appellant was that under Section 86, and the privilege was only available to Sovereign Chiefs or Ruling Princes. The suit in this case was filed in December 1948, and it is no longer in dispute that at that time the State of the appellant had merged in the Dominion of India, and the appellant was no longer a Sovereign Chief or Ruling Prince. It is contended, however, that under the terms of the Merger Agreement the appellant was entitled to the same personal dignity and titles as before the date of the agreement, and he is consequently entitled to the dignity which Section 86 confers upon all Sovereign Chiefs and Ruling Princes.

5. In support of this contention, reliance is placed upon the decision of the Allahabad High Court in - '*Kant Narain v. Chandrabhal*²', In that case there was a clause in the Merger Agreement:

"The Maharaja and his family shall be entitled to all personal privileges enjoyed by them whether within or outside the territories of the state, immediately before 15-8-1947."

It was held that this had reference to the privilege conferred under Section 86, Civil Procedure Code the guarantees having been given a statutory effect in Article 363, Constitution of India.

6. Now, in the first instance, a personal dignity is different from a personal privilege, and the right of being exempt from being sued in a Court cannot properly be called a dignity. But even if it amounted to one, I do not see how it would help the appellant. It is true that the Government under the Merger Agreement guaranteed the personal dignity of the appellant. But what is required when an exemption from being sued is claimed is a provision of an enactment. The Merger Agreement has not got the force of law. This appears to have been impliedly recognized by the Allahabad High Court, when they pointed to Article 363 of the Constitution. Now, that article provides:

"Notwithstanding any thing in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, 'sanad' or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the

Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, 'sanad' or other similar instrument."

² AIR 1951 All 603

It seems to have reference to disputes arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument between the Ruler of the State on the one hand and the Government of the Dominion of India or any of its predecessor Governments on the other. Now, the suit which was before the Court had, by itself, no reference to any such dispute. It is true that there is a dispute between the two parties to the suit with regard to the meaning of the words 'personal dignity' in one of the clauses of the Merger Agreement between the appellant and the Dominion of India on the assumption that that agreement has application. But that does not render the dispute which was before the Court in the suit against the appellant a dispute arising out of the provisions of a treaty, agreement, covenant, engagement, sanad or other similar instrument.

7. In that case, inasmuch as Section 86 has no application to the appellant, who has ceased to be a Ruling Chief when the suit has been filed, the trial Court had jurisdiction to try the suit against the appellant.

(The rest of the judgment is not material to the report.)

Appeal dismissed.